N. E. 1062. It is usually held that the defense of assumption of risk does not avail when the negligence is a violation of a statutory duty. *Inland Steel Co.* v. *Kachwinski,* 151 Fed. 219; *Antioch Coal Co.* v. *Rockey,* 169 Ind. 247, 82 N. E. 76; *Western Furniture & Mfg. Co.* v. *Bloom,* 76 Kan. 127, 90 Pac. 821.

MASTER AND SERVANT—SERVANT'S ABANDONMENT OF EMPLOYMENT—SEVERAL CONTRACT.—Plaintiff agreed to work a period of one year for defendant for a consideration of $250.00, payments to be made from time to time as the services were rendered, but not at any particular stated times. $94.92 was paid to the plaintiff. At the end of nine months plaintiff abandoned the contract without cause, and brought this action for work, labor and services rendered for $92.38, the amount due him, measured by the terms of the contract, for the services actually rendered. *Held,* that plaintiff should recover *Mernagh* v. *Nichols,* (1909), 118 N. Y. Supp. 59.

The reasons for this decision are stated by the court as follows: "Where parties expressly agree that services for the entire term of the contract shall be rendered as a condition precedent to the payment of any part of the wages, the entire contract must be performed in order to enable the servant to recover the wages actually earned, but where the agreement is for payment from time to time during the term, recovery can be had for the wages earned, though the servant abandons the service before the expiration of the term without cause." This rule is plainly at variance with rules established in the early New York cases. In *Lantry* v. *Parks,* 8 Cow. 63, the plaintiff entered into a contract to work one year for defendant at a salary of $10.00 per month. At the end of ten and one half months defendant left the service without cause, and brought action for the value of the services rendered. The court held that the contract was entire and that the performance of the labor was a condition precedent to any recovery. See also *McMillan & McMillan* v. *Vanderlip,* 12 John. 165. The decision in the principal case is not only opposed to the doctrine of the earlier New York cases cited above, but it establishes a rule in advance of the modern general rule upon the subject. The general rule seems to be that "A contract for personal services is severable when one agrees to serve for a definite term, as a year, at wages payable weekly." *Markham* v. *Markham,* 110 N. Car. 356; *Mathews* v. *Jenkins,* 80 Va. 463. The principal case holds that such contracts are severable where the payments are to be made from time to time, but at no particular stated times. The minority rule upon this subject is followed in the case of *Almstead* v. *Bach,* 78 Md. 132, where it was held that a contract to work for a year, at a certain salary payable monthly, was entire. The principal case follows *Tipton* v. *Feitner,* 20 N. Y. 423, where plaintiff contracted to sell defendant pork and live hogs, to be delivered at different times. He delivered the pork but failed to deliver the live hogs. The court held that the contract was severable and a recovery could be had for the pork furnished. In following this case and in citing, but refusing to follow, the early cases upon contracts for personal services, the court has apparently abandoned the dis-

tinction between contracts for personal services and other contracts in general, a distinction which has been generally recognized, yet, according to the Kansas Supreme Court in *Duncan* v. *Duncan*, 21 Kan. 99, one not based upon reason. The court maintains that where the master receives a benefit from the labor, and either from choice or necessity retains it, he should pay what it is reasonably worth the same as in any other kind of a contract.

MORTGAGES—PASSING OF AFTER ACQUIRED TITLE.—S. gave a mortgage upon property which he did not own at the time the mortgage was executed, but to which he subsequently acquired title. The granting clause of the mortgage was as follows:—"I also bargain, sell and convey * * * all right, title and interest that I may have in and to the mineral lands, etc. Sec. 3421, Ala. Code, 1907, provides that "In all conveyances of estates in fee the words 'grant,' 'bargain,' 'sell,' or either of them must be construed, unless it otherwise clearly appears from the conveyance, an express covenant," etc. Plaintiff sought to foreclose the mortgage, claiming that the title acquired subsequent to the execution of the mortgage inured to his benefit. *Held,* that although the words of the statute were used it otherwise clearly appeared from the terms of the instrument that no covenant of warranty was intended and the after acquired title did not inure to the benefit of the mortgagee. *Vary* v. *Smith et al.,* (1909), — Ala. —, 50 South. 187.

Under statutes in several states an after acquired title may be passed by less than a warranty deed. *Van Rensselaer* v. *Kearney,* 52 U. S. (11 How.) 297; *Tilton* v. *Flormann,* (S. D.), 117 N. W. 377; *Bradley Estate Co.* v. *Bradley et al.,* 97 Minn. 130, 106 N. W. 110. The same holds for mortgages, and an express covenant of warranty is not necessary to pass an after acquired title. *Kirkaldie* v. *Larrabee,* 31 Cal. 456; *Bernardy* v. *Colonial & U. S. Mortgage Co.,* 17 S. D. 637, 98 N. W. 166, 106 Am. St. Rep. 791; *Clark* v. *Baker,* 14 Cal. 612, 76 Am. Dec. 449 and note. Where the conveyance is in the general form of a quit claim deed, as in the principal case, the courts of states with statutes similar to that of Alabama differ in their decisions. It seems that if the conveyance purports to pass a fee it will pass an after acquired title. *Garrett* v. *Christopher,* 74 Tex. 453, 12 S. W. 67, 15 Am. St. Rep. 850. *Bogy* v. *Shoab,* 13 Mo. 366. It is in determining whether a given conveyance purports to pass a fee that the courts differ. Where a quit-claim deed recited that it remised, released and quit-claimed to the grantee certain lands "To have and to hold the premises unto the said (Grantee) and his heirs and assigns forever" it was held that the conveyance purported to pass a fee and the after acquired title would pass. *West Seattle Land & Improvement Co.* v. *Novelty Mill Co.,* 31 Wash. 435. See also *Garrett* v. *Christopher,* supra; *Balch et al.* v. *Arnold, et al.,* 9 Wyo. 17; *Field* v. *Columbet,* 4 Sawy. 523, Fed. Cas. No. 4764. On the other hand where the grantor "granted, sold, and conveyed the right, title and interest in and to the land—to have and to hold the described lands to him and his heirs and assigns forever," the court held that the conveyance did not pass a fee expressly or by implication and the grantor was not estopped from setting up an after acquired title. *Pendill* v. *Marquette Co. Agricultural Soc.,* 95 Mich.